



CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 09/12/98

#### ORAL JUDGEMENT

1. In this writ petition under Article 226 of the Constitution of India two prayers have been made, one in the nature of certiorari for quashing the detention order dated 24.4.1998 passed by the Commissioner of Police, Rajkot under Section 3(2) of the Prevention of Anti-social Activities Act, 1985 (for short "PASA Act") and for immediate release of the petitioner from illegal detention.

2. The detaining Authority, after considering three cases registered under the Prohibition Act against the petitioner and also considering the statements of three witnesses, who requested to keep their names and addresses secret, came to subjective satisfaction that the petitioner is a bootlegger and his anti-social activities connected with bootlegging activities were prejudicial to maintenance of public order. As such the impugned order was passed which is under challenge in this writ petition on two counts.

3. The first is that neither three registered cases nor the statements of three witnesses were sufficient to come to subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order. The contention seems to have force. From three registered cases and the narration of incidents by three secret witnesses it was rightly interfered by the detaining Authority that the petitioner is a bootlegger. However, the detaining Authority was further required to reach subjective satisfaction that within the meaning of Section 3(4) and explanation appended to Sub.Section 4 of Sec. 3 of the PASA Act, activities of the petitioner were prejudicial to maintenance of public order. Statement of three witnesses have been examined as are given in the grounds of detention. Attempt was made to high-light that these incidents were prejudicial to maintenance of public order and actually disturbed the public order, but no such indication has been made by the detaining Authority in the extracts of such statements. On the other hand it seems that temporary fear and terror was created in the locality on account of complained activities of the petitioner. However, these activities had no tendency of disturbing public order and as such the subjective satisfaction of the detaining Authority that the activities of the petitioner were prejudicial for maintenance of public order was mechanical. As a

consequence thereof the detention order is rendered invalid and illegal.

4. The second ground that the representation of the petitioner sent by his Advocate was not considered by the State Government which has rendered his detention illegal so also his continued detention illegal has force. In Para : 3 of the Counter Affidavit of Shri J.R.Rajpur, Under Secretary to the Government of Gujarat it is admitted that the representation dated 26.5.1998 was sent by the Advocate of the detenu addressed to the Home Minister of the State, it was actually sent to the Chief Minister, which was received there on 30.5.1998. The Home Department received the said representation on that very day. The Home Department found that there was no signature or thumb impression of the detenu and as such the representation was returned to the Advocate of the detenu for compliance and since no response was received thereafter there was no occasion for delay in consideration of the representation. This stand of the State Government is hardly justified in view of the judgment of the Apex Court in Balchand Chorasias v/s. Union of India, reported in AIR 1978 SC 297. If the representation was sent by the Advocate of the detenu under the instructions of the detenu no further compliance was needed either by the detenu or by his Advocate. Signature or thumb impression of the detenu was not needed on a representation which was sent by the Advocate himself under the instructions of the detenu. Such casual dealing of representation on technical ground was not approved by the Apex Court in the case of Balchand Chorasias (supra). The State Government should have considered the representation treating it to be the representation under the instruction and authority of the detenu. Since it was not done and further because the Advocate was not obliged to make any compliance in response to communication dated 30.5.1998, the detention and continued detention of the petitioner has been rendered illegal.

5. For the reasons aforesaid the writ petition succeeds and is hereby allowed. The impugned order dated 24.4.1998, Annexure : B to the writ petition, is hereby quashed. The petitioner shall be released forthwith from the custody unless he is wanted in some other criminal case.

sd/-

( D. C. Srivastava, J. )

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